

Supreme Court, U.S.

FILED

OCT 18 1990

JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MICHAEL R. WOOD,

Petitioner,

v.

ALAMEDA COUNTY SUPERIOR COURT,
CITY OF HAYWARD, CALIFORNIA

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, FIRST APPELLATE DISTRICT,
DIVISION FOUR

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the subject matter jurisdiction of the state court suspended after removal of the unlawful detainer action to federal court to use a state summons?
2. Where Plaintiff's unlawful detainer complaint failed to set forth good cause for termination failing to support a 5-day summons, should defendant's motion to quash should have been granted?
3. Was Plaintiff required to exhaust administrative remedies for public airport eviction, prior to filing unlawful detainer action?

PARTIES AND RELATED CASE

The parties in the court below are as set forth in the caption. The City of Hayward, California is the Real Party Interest, and the Respondent in the lower court was the Superior Court of Alameda County, California, and Judge Joseph J. Carson was presiding. The trial court was the Municipal Court of Alameda County, San Leandro-Hayward Judicial District, California, and Judge Leo Dorado was presiding.

The related case is titled MICHAEL R. WOOD, Petitioner, v. ALAMEDA COUNTY SUPERIOR COURT, CITY OF HAYWARD, CALIFORNIA, Respondent, Sup. Ct. No. 90-555, filed September 27, 1990.

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**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990**

MICHAEL R. WOOD

Petitioner,

v.

**ALAMEDA COUNTY SUPERIOR COURT,
CITY OF HAYWARD, CALIFORNIA,**

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, FIRST APPELLATE DISTRICT,
DIVISION FOUR**

The petitioner Michael R. Wood respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California, First Appellate District, Division Four entered in this proceeding on May 4, 1990.

The issues before the court in this petition for writ of certiorari is the final act of the fraud to prevent actual notice to the tenant, and as part of the coverup to prevent discovery of the scheme and the plan to take a default, and default judgment of the absentee tenant on a public airport.

Petitioner seeks issuance of the writ, to test the validity of the following actions by respondent state court:

1. Enforcement of state court unlawful detainer summons after underlying case was removed to Federal Court.
2. Conduct of further hearings and procedures by state court after receipt of copy of defendants removal petition.
3. Issuance and enforcement of unlawful detainer summons and complaint to evict a public airport tenant without a requisite showing of good cause.
4. Proceed with an eviction of a tenant on a public airport without exhausting the administrative remedies prior to filing and unlawful detainer action.

The above proceedings arise from an attempt by the City of Hayward to evict Petitioner from his tenancy of a public airport hanger space, without complying with federal requirements of "good cause", which included statement of reasons constituting good cause for the termination. Under the terms of the Quitclaim deeds and Federal grant agreements to the City of Hayward, the U.S. government expressly required that the premises be managed in a non-discriminatory manner, and that the airport facilities access not be denied arbitrarily to members of the public. Petitioner contends that evictions without good cause shown is a violation of the Quitclaim deeds covenants and Federal grant agreements terms and conditions. Petitioner has attempted to obtain redress for these violations by removal to Federal District Court. Respondent state court's conducting of hearings after said removal were invalid, and void for want of jurisdiction.

OPINION BELOW

The judgment, and orders, of the lower courts are not reported, and appear in the Appendix hereto. The lower courts affirmed a judgment based on theory that the state trial court needed an order from the federal district court before the case could be transferred to the Federal Court, even though a petition for removal had been timely filed. Notice had been given to the plaintiff that the case had been removed, and had been transferred to Federal Court, and notice was filed with the clerk of the state court. Petitioner contends the service of state summons after removal did not give the state court jurisdiction over the defendant.

The trial court affirmed that the unlawful detainer complaint stated a cause of action, even though the 30-day notice lacked a statement of "good cause" in termination of said tenant's lease, and in direct violation of the tenants. This was a direct violation of petitioners right to procedural due process under the Fifth and Fourteenth Amendment.

Further, the Superior court affirmed that the Municipal Court the had subject matter jurisdiction, even though landlord had failed to exhaust its administrative remedy with the Federal Aviation Administration prior to filing the unlawful detainer action, which was a prerequisite prior to bring an unlawful detainer action under 14 C.F.R. § 13.5, eviction from any airport subject to Federal Aviation Administration jurisdiction, must first be approved, for good cause, and opportunity to cure default, shown to the Federal Aviation Administration, prior to institution of state court proceedings.

The Supreme Court of California Petition for Review, case no. S015559, is set forth in the Appendix, A-1.

The Court of Appeal of the State of California, First Appellate District, Division Four, Writ of Mandate, case no. A049411, is set forth in the Appendix, A-2.

The Superior Court of the State of California, County of Alameda, Writ of Mandate, case no. H-146804-5, is set forth in the Appendix, A-3.

The Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District, Case No. 425171-2, Motion to Quash Service of the Summons under Civil Procedure, Section 418.10(a), is set forth in the Appendix, A-4.

BASIS OF THE COURT'S JURISDICTION

The judgment of the Court of Appeal of the State of California, First Appellate District, Division Four was entered on May 4, 1990. A timely petition for Writ of Review was filed with the California Supreme Court, which was denied on June 20, 1990, and rehearing was not sought. This petition for Certiorari was to be filed within 90 days of that day (September 18, 1990), but Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States extended to and including October 18, 1990 to file a petition for a Writ of Certiorari in the above-entitled case by extending said time to file. The court entered an order on September 11, 1990, based upon an application, No. A90-188. This court's jurisdiction is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS AT ISSUE

This action involves the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, U.S. Const. Amend. XIV, Section 1 as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

FEDERAL STATUTE IN QUESTION

Further, this action involves 28 U.S.C. section 1446(d) as follows:

"(d) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such court state court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

STATEMENT OF THE CASE

The following issues and facts were first raised before the trial court, in response to a second attempt of service on the petitioner with the service of a state court summons that was "invalid" and "ineffective and void" after the petition for removal of civil action was filed with the United States District Court, Northern District of California, case No. 89-4332-WWS (ARB) on December 8, 1990. Thereafter, notice of removal was served upon and notice was given to plaintiff's counsel on the same day, and notice was also timely filed in state court, operating retroactively to "effect the removal" as of the date of filing the Petition in Federal Court. On December 8, 1989 jurisdiction of the federal court immediately attached and the right of the state court to proceed ceased. The plaintiff's counsel attempted a second service to prevent the court from finding out about the fraud as to the posting that purportedly took place in the first service. The second attempted service was four days after the case had been removed to the Federal Court. At the time, the defendant appeared at the state court hearing, (which had been set for hearing before the removal of said case), to argue lack of service base upon "posting only", and to inform the court that the case had been transferred to the Federal Court. Prior to the hearing plaintiff's counsel informed the court "I just served the defendant" "there is no need for this hearing", and the trial court on its own motion continued the hearing to December 26, 1989. On December 26, 1989 the petitioner filed with the state court clerk, before the

hearing, and at the same time served upon the judge's clerk a conformed filed copy notice that a petition for removal of the civil action had been filed with Federal District Court. At the hearing the petitioner informed Judge Leo Dorado of the removal of the case to the Federal District Court, and that the notice and petitions papers under 28 U.S.C.1441, 1446(d) had been filed in the Office of the Clerk for the Municipal Court of California, County of Alameda, San Leandro-Hayward Judicial District. At the hearing on December 26, 1989 the court stated "I have read the document entitled notice that a petition for removal of the civil action to the federal district, and attached is a document called a petition for removal of civil action with a file stamp of December 8, 1989, but "this is not a court order". "I want to see a signed court order from a federal judge". Thereafter, Judge Leo Dorado was informed that filing with the state court clerk functions as a notice of the superseding federal jurisdiction and the petition attached was the order per 28 USC, Section 1441 and 1446(d), and that federal jurisdiction vested for all purposes when the petition was filed in the district court. That the later notice thereof and the filing of a copy thereof in state court was operating retroactively to "effect the removal" as of the date of filing the petition in federal court on December 8, 1989, or until the case is remanded to state court upon proper and timely motion. Thereafter, Judge Dorado refused to stop proceeding without a court order, and thereafter denied out of hand petitioners Motion to Quash Service of the Summons as to first service. Prior to this hearing on December 26, 1989, the petitioner had filed a motion on December 18, 1989 to Quash Service of Summons as to the second

attempt service. Further, he argued that the court lacked jurisdiction for the notice attached to the complaint was defective for lack of a statement of reasons for "good cause" in termination of said tenant in violation of the tenant's Fifth and Fourteenth Amendment rights to procedural due process. Good cause is required by the quitclaim deed and Federal grant agreements from the federal government. Furthermore, the petitioner argued that the court lacked subject matter jurisdiction, because the plaintiff failed to exhaust administrative remedies before the Federal Aviation Administration prior to filing unlawful detainer action being a prerequisite.

SUMMARY OF THE ARGUMENT

Tenant is faced with the forced eviction from his aircraft storage hanger for (1) failure to receive actual notice based on the first attempted service by posting only; (2) for failure of the landlord to serve a state court summons before the case is removed to the Federal Court, which is "ineffective and void"; and (3) that the 30 day notice attached to the complaint fails to support a five-day summons, and is defective for lack of a statement of reasons for "good cause" for termination of said tenant's Fifth and Fourteenth Amendment rights to procedural due process; and (4) the landlord has failed to exhaust administrative remedies prior to filing the unlawful detainer action.

REASONS FOR GRANTING THE WRIT

The precise issues presented in the writ is substantial as to require plenary consideration as the following:

1. **The service of a state summons that is served after the petition for removal is filed is "ineffective and void" and "invalid", and the court lacks jurisdiction of the defendant.**

The State Court lacks jurisdiction over the petitioner when the removal petition is filed with Federal Court, and all the removal procedures are completed retroactively to confer jurisdiction on the Federal Court as of the time the petition had been filed in the Federal Court. Thereafter, if the landlord serves a state summons it is "ineffective and void" and "invalid". Federal, and not state, law governs all removal proceedings. Grubbs v. General Elec. Credit Corp., (1972), 405 U.S. 699, 92 S.Ct. 1344, 31 L.Ed.2d 612. It will be seen that the provisions of 28 U.S.C. §1446 was satisfied. The removal papers had been filed with the United States District Court; notice and the petition were served on the landlord, and notice and the petition was given to the judge and was filed with clerk of the state court, all within 30 days satisfied all written notice that were required to be given.

The trial courts position was that the copy of the removal petition was not a court order signed by a federal judge, even though the petition for removal had been filed with United States District Court, Northern District of California. (28 U.S.C. §1446(d) formally 28 USC §1446(e); Rollwitz v. Burlington No Railroad (DC MT 1981) 507 F.Supp. 582)

No court order was required for removal to the United States District Court, and jurisdiction of the case had been transferred as of December 8, 1989, ending state court jurisdiction. On December 8, 1989, any further action in the state court was "void" until the case was remanded. Thereafter, the landlord served a state court summons upon the defendant that was ineffective and void and invalid. The respondent court entered an order without jurisdiction, summarily denying the motion to Quash Service of the Summons on the first attempt after the action had been removed to the Federal District Court. The second attempt of service of the summons, and the summary denial of the motion to Quash the service of the Summons of the first attempt was "void". Stone v. South Carolina, (1886), 117 U.S. 430, 6 S.Ct. 799, 28 L.Ed 962 The landlord has the burden of establishing personal jurisdiction. Welsh v. Gibbs, (6th Cir. 1980) cert. denied, 631 F.2d 436, 438 (6th Cir. 1980), 450 U.S. 981, 101 S.Ct. 1517.

In reviewing the decisions of the court below we find the reasoning applied to this question of law to be correct. The United States District Court for the District of North Dakota, in Horning v. Master Tank & Welding Co., (D.N.D. 1957) 151 F.Supp. 169, discussed the effect of federal and state jurisdiction:

"Federal jurisdiction vested for all purposes when the Petition was filed in this court, the later notice thereof and the filing of a copy thereof in state court operating retroactively to 'effect the removal' as of filing the Petition in the federal court."

(emphasised) Shenandoah Chamber of Progress v. Frank Associates, (D.C. Pa.1950) 95 F. Supp. 719.

In reviewing another of the court below we find the reasoning as applied is correct law. In the case of Master Equipment, Inc. v. Home Ins. Co. (E.D. Pa. 1972) 342 F.Supp. 549 the court found the following:

"The question was whether the State Court judgment was valid. The federal court held that the petition acted retroactively to confer federal jurisdiction on the federal court as of the date the petition had been filed in the federal court."

A new federal summons must be obtained for service after removal. Use of the state court summons is invalid. Dean Marketing, Inc. v. AOC Int'l (ED MI 1985) 610 F. Supp. 149, 152 These decisions indicate that service of the summons, and the denial of the motion to quash Service of Summons first attempt were "ineffective and void". and "invalid". ***The trial court lacked jurisdiction over the petitioner for lack of service of a state court summons***, which was "ineffective and void" upon filing of the petition for removal to the United States District Court.

B The 30-day notice attached to the complaint fails to support a 5-day summons for unlawful detainer action for lack of a statement of reasons constituting good cause for the termination.

The notice attached to the complaint is defective for lack of a statement of reasons for "good cause" in termination of said tenant in violation of the tenant's Fifth and Fourteenth

Amendment, and fails to support a 5-day summons for unlawful detainer action. The court can not acquire personal jurisdiction over the defendant through service of the five-day unlawful detainer summons (Castle Park No. 5 v. Katherine (1979) 91 Cal. App.3d Supp. 6, 8 fn. 1, 154 Cal. Rptr. 498) when the unlawful detainer complaint fails to state a cause of action (Delta Imports, Inc. v. Municipal Court (1983) 146 Cal. App.3d 1033, 194 Cal. Rptr. 685). The attached 30-day notice violated the tenant's Fifth and Fourteenth Amendment rights to procedural due process because the notice does not include a statement advising the tenant of reasons constituting "good cause" for the termination of said tenant (Gallman v. Pierce, 639 F. Supp. 472 (N.D. Cal. 1986); No in personam jurisdiction was obtained by serving a ineffective state court summons on December 11, 1989 rather than a federal summons after a petition for removal was filed with the Federal Court (28 U.S.C. §1448). The service is "invalid" and "void", and does not give the court jurisdiction over the person unless and until the cause is remanded for improper removal by the district court (Dauenhauer v. Superior Court (1957) 149 C.A.2d 22, 307 P.2d 724; and the state court may not resume its jurisdiction over the suit (Allstate Ins. Co. v. Superior Court (1982) 132 C.A.3d 670, 183 C.R. 330). The Federal Court had jurisdiction between December 8, 1989 through to, and including January 4, 1990 at which time it remanded the case back to the state court for lack of subject matter jurisdiction based upon lack of exhausted administrative remedies.

C. City of Hayward failed to exhaust administrative remedy prior to filing the unlawful detainer action.

Before the Real Party In Interest the City of Hayward can terminate the tenancy of a tenant it must exhaust all administrative remedies with the Federal Aviation Administration. City of Las Cruces v. Quiones, 14 Aviation 17,764, 10th Cir. March 29, 1977 ***The City of Hayward has not attempted to exhaust the administrative remedy required before bring a unlawful detainer action.*** Before a party may obtain judicial termination of a tenant at a airport it must exhaust the administrative remedy prior to bring an action against the tenant. In California the requirement is jurisdictional. Abelleira v. District Court of Appeal (1941) 17 C.2d 280, 293, 109 P.2d 942

"it is not a matter of judicial discretion, but is a fundamental rule of procedure . . . a jurisdiction to entertain an action for judicial relief is conditioned upon a completion of the administration procedure". (emphasis added)

Further, the court said in the case of California Aviation Council v. Amador (1988) 200 C.A.3d 337, 341, 246 C.R. 110:

"If a court allows a suit to go forward prior to a final administrative determination, it will be interfering with subject matter of another tribunal Consequently, the requirement of exhaustion is a jurisdictional requirement, not a matter of judicial discretion".

Here the Respondent court lacked jurisdiction over the petitioner for failure of the landlord to exhaust its administrative remedy prior to filing the unlawful detainer action, which is a prerequisite. Also, jurisdiction was suspended during the pendency of the petition for removal.

CONCLUSION

Because of all of the above reasons, Respondent trial court lacked subject matter jurisdiction. Accordingly its orders and actions taken were "invalid" and "void", and Petitioner is entitled to relief by Writ of Certiorari.

Respectfully submitted,

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Attorney for Petitioner
In Propria Persona

APPENDIX

BEST AVAILABLE COPY

Supreme Court
Filed, June 20, 1990
Robert Wandruff Clerk

**ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT,
DIVISION FOUR, NO. A049411,**

**S015559
IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA IN BANK**

**MICHAEL .R. WOOD,
Petitioner**

vs.

**ALAMEDA COUNTY SUPERIOR COURT,
Respondent**

**CITY OF HAYWARD, A MUNICIPAL
CORPORATION
Real Party In Interest**

Petition for Review DENIED

/s/ PANELLI

Chief Justice

Filed
MAY 4, 1990
Court of Appeal,
First App. Dist.
Ron D. Barrow Clerk

COURT OF THE APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION FOUR
A049411
ALAMEDA COUNTY NO. H1468045

WOOD, MICHAEL

vs.

SUPERIOR COURT, ALAMEDA COUNTY
CITY OF HAYWARD, ET AL.,

BY THE COURT:

The petition for writ of mandate is
DENIED.

The justices participating in this matter
were:

ANDERSON, P.J.; POCHE, J. ; PERLEY, J;

The justice who did not participate in this
matter were;

CHANNEL, J.;

Dated: April 13, 1990

/s/ ANDERSON,

P.J.

FILED
APRIL 9, 1990
RENE C. DAVIDSON,
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

MICHAEL R. WOOD, an
individual,
Petitioner,

NO. H-146804-5
ORDER

vs.

MUNICIPAL COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA,
RESPONDENT
_____ /

CITY OF HAYWARD,
Real Party in Interest.
_____ /

Petitioner's petition for Writ of Mandate came on for hearing on April 4, 1990, in Department 31 of the above-entitled court, Judge Joseph Carson presending. Real Party In Interest, City of Hayward appeared by its counsel, Debra S. Margolis, Deputy City Attorney II. Petitioner Michael R. Wood did not appear. The court having read and considered the oral and written evidence presented, and good cause appearing therefore,

IT IS HEREBY ORDERED that petitioner's Petition for Writ of mandate is denied in its entirety.

Dated : April 4, 1990

/s/ JOSEPH J. CARSON

Judge of the Superior Court

Filed
March 5, 1990
Wayne Low, Clerk of the
Municipal Court

MUNICIPAL COURT OF CALIFORNIA
COUNTY OF ALAMEDA
SAN LEANDRO-HAYWARD JUDICIAL DISTRICT

CITY OF HAYWARD,
a municipal
corporation,
plaintiff,

NO. 425171-2
ORDER

vs.

MICHAEL R. WOOD,
an individual,
defendant.

_____/

Defendant's motion to quash service of summons came on for hearing on February 27, 1990, in Department 9 of the above-entitled court, Judge Leo Dorado, presiding. Plaintiff City of Hayward appeared by its counsel, Debra S. Margolis, Deputy City Attorney II. Defendant Michael R. Wood appeared in propria persona. The court having read and considered the oral and written evidence presented, and good cause appearing therefore,

IT IS HEREBY ORDERED:

1. Defendant's motion to quash service of summons is denied in its entirety;

Dated: 2/27/90

/s/ Leo Dorado

Judge of the Municipal Court

